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Public Hearing Date:	November 14, 2006
Land Use Action Date:	December 19, 2006
Board of Aldermen Action Date:	January 5, 2007
90-Day Expiration Date:	February 12, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radzevich, Chief Planner
Alexandra Ananth, Planner

DATE: November 9, 2006

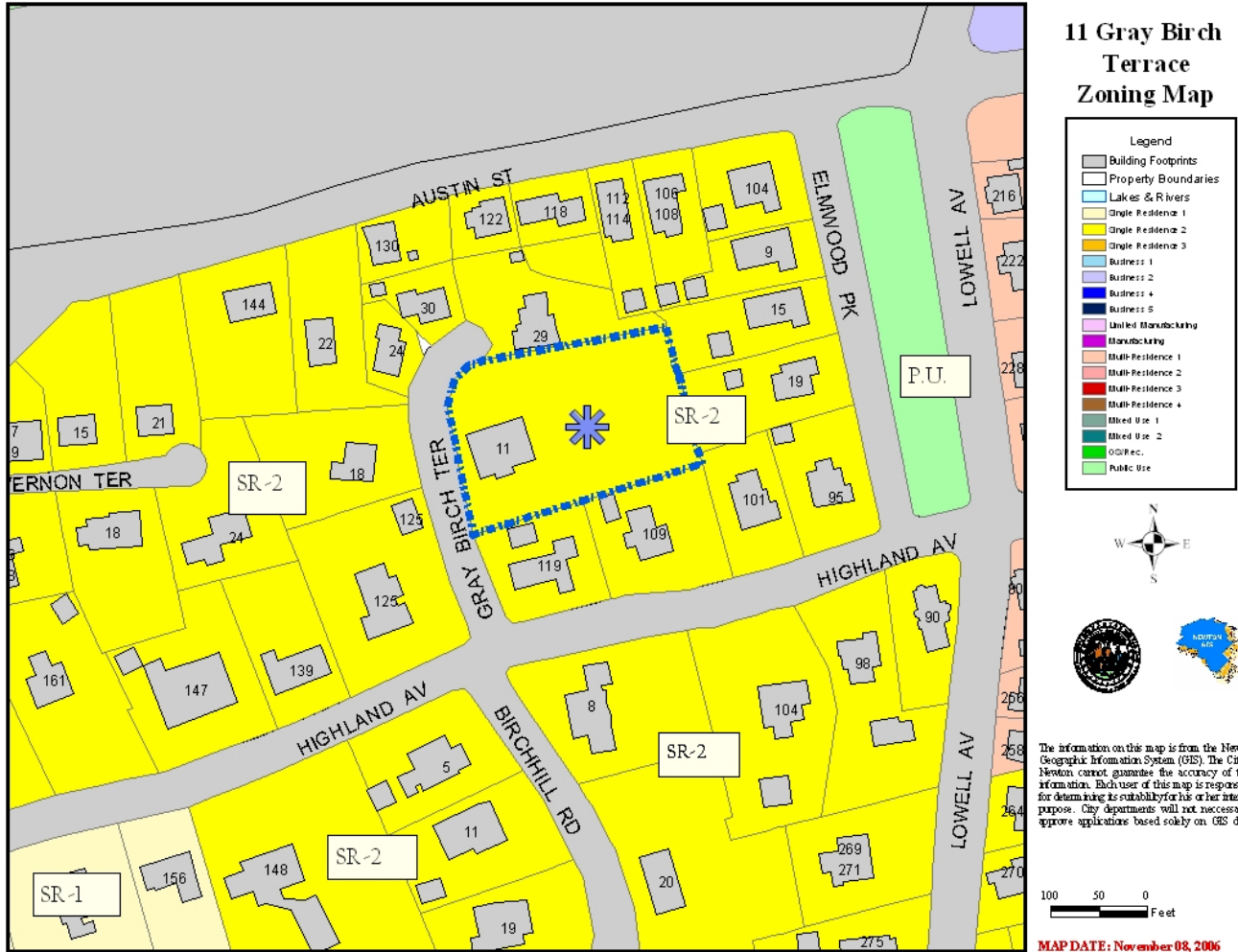
SUBJECT: Petition #349-06 of JOSEPH LONG for a SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision including a greater than 3 ft. grade change to create a new buildable lot on which a new single-family home, meeting all dimensional requirements, will be constructed at 11 GRAY BIRCH TERRACE, Ward 2, Newtonville, on land known as Sec 24, Blk 7, Lot 9, containing approx. 36,474 sf of land in a district zoned SINGLE RESIDENCE 2.

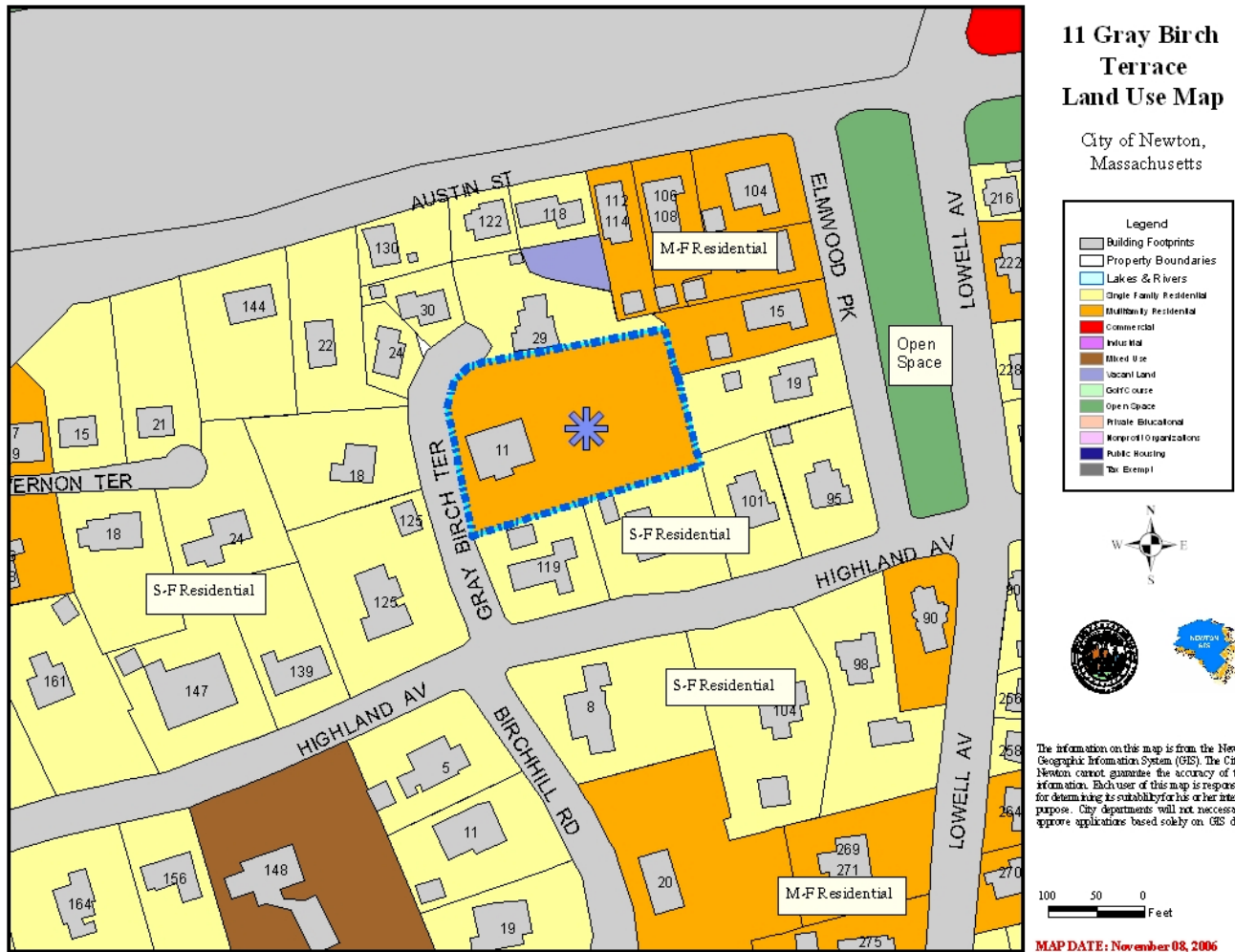
EXECUTIVE SUMMARY

The petitioner seeks to subdivide an existing 36,474 sq. ft. lot in order to create a rear lot for a new single-family dwelling while retaining the two-family house on the front lot. The petitioner is also seeking a special permit for a greater than 3 ft. grade change on portions of the rear lot to accommodate the new house. Both lots will meet all of the requirements except for the existing non-conforming front setback of the existing house.

I. BACKGROUND

The existing 36,474 sq. ft. property, located on the easterly slope of "West Newton Hill," is currently improved with a legal non-conforming two-family dwelling with an accessory apartment. The petitioner seeks to create a rear lot for a new single-family dwelling while retaining the two-family house on the front lot, but discontinuing the accessory apartment. The petitioner's request is the first rear lot subdivision petition under the revised rear lot ordinance (30-15(r)) adopted by the Board of Aldermen in 2004.





II. ELEMENTS OF THE PETITION

The petitioner is proposing to subdivide an existing 36,474 sq. ft. lot in order to allow for the construction of a single-family residence on the newly created lot. The front lot would include 16,029 sq. ft of land, with the entire frontage on Gray Birch Terrace, and the existing two-family dwelling, constructed in 1830. The new rear lot would include 20,446 sq. ft. of land, with ~43 ft. of frontage on Gray Birch Terrace, and the remainder measured off the new rear lot line of the proposed new front lot. The petitioner is proposing significant re-grading of the site and have requested a special permit for a change in grade of greater than 3 ft. (and up to 11 ft.) to accommodate the new house.

III. ZONING RELIEF BEING SOUGHT

Based on the Chief Zoning Code Official's written determination, dated October 5, 2006 (SEE ATTACHMENT "A"), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-5(b)(4) for approval of alteration of existing contours by more than 3 ft.;*
- *Section 30-15(r)(2)I) for approval of rear lot subdivision;*
- *Section 30-23 for approval of proposed site plan, and related alterations and development at both lots, respectively; and*
- *Section 30-24(d) for approval of special permit to allow a new rear lot and related alterations and development at both lots, respectively.*

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

Section 30-15(r)(2)c)(ii) establishes a series of criteria to be considered by the Board of Aldermen in reviewing a new rear lot development. In reviewing this petition, the Board should consider the following:

- *Whether the site is appropriate for subdivision and creation of an additional (new rear) lot;*
- *The scale of the proposed structure in relation to adjacent residential buildings;*
- *Adequacy of vehicular access including fire and other public safety equipment;*
- *Siting of the proposed structure with reference to abutting residential buildings;*
- *Whether the proposed change in grade will have any harmful impacts on abutting residents; and*
- *The impact of proposed landscape screening, and proposed lighting.*

In addition to the criteria in 30-15(r)(2)c)(ii), the Board should also consider whether it is appropriate to allow the petitioner to maintain a legal non-conforming two-family structure on the front lot rather than converting that structure to a single-family residence to be consistent with other single-family residential uses on this street.

V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The site is accessed off Gray Birch Terrace, a cul-de-sac with 5 houses on the easterly slope of West Newton Hill. The proposed site is part of a 36,474 sq. ft. lot and currently contains a large (~4,200 sq. ft.) legal non-conforming two-family dwelling with an accessory apartment. Although the two-family use was deemed a legal non-conforming use per a letter dated October 10, 1986, from Paul E. Foley, Senior Building Inspector (*SEE ATTACHMENT "B"*), there are no records of a permitted accessory apartment. The petitioner has stated that the accessory apartment will be discontinued if the subject special permit is granted, however, the Planning Department notes that regardless of whether the special permit is granted, as there is no proof that this is a legal unit, the accessory apartment should be discontinued.

A bituminous driveway located east of the structure serves the existing non-conforming two-family dwelling with an accessory apartment. Though not dimensioned on submitted plans, existing parking stalls appear to be located in the front setback.



Existing two-family house and parking area

The rear portion of the existing lot is heavily wooded and slopes down to the north towards Lowell Avenue with an approximately 40 ft. grade differential from the southwest to the northeast corners. The site is the largest lot in the immediate area and is surrounded by single-family residences.



Proposed new rear lot

B. Neighborhood

The site is located within a Single Residence 2 District on the easterly slope of West Newton Hill in Newtonville. The neighborhood is improved with predominantly single-family houses and the site is surrounded by single-family uses except for an area northeast of the site where there is a pocket of two-family dwellings near the intersection of Elmwood Park and Austin Street.

The petitioner's lot is more than double the average lot size in the immediate neighborhood, which range in size from 4,100 sq. ft. to 25,146 sq. ft. (excluding the petitioner's lot) with the average lot size being approximately 12,500 sq. ft. The two newly created lots would still be among the larger lots in the neighborhood at 16,029 sq. ft. and 20,446 sq. ft. Though there are some large lots south of Highland Avenue (along Otis Street), no other lots in the immediate area are large enough for further subdivision.

VI. ANALYSIS

A. Technical Considerations, Sec. 30-15(r)

Section 30-15(r)(2)a) provides that the proposed front lot (Lot 1) is subject to dimensional controls applicable per Section 30-15, Table 1, Density and Dimensional Controls in Residence Districts and for Residential Uses for lots created after December 7, 1953. The following table compares the proposed new front lot to the technical requirements in a Single Residence 2 District:

Single Residence 2 (new lot)	Required	Proposed Front Lot 1
Minimum lot size	15,000 sq. ft.	16,029 sq. ft.
Frontage	100 ft.	145 ft.
Setbacks		
Front	30 ft.	16 ft. (existing)
Side	15 ft.	33.3 ft.
Rear	15 ft.	32.2 ft.
Building height	30 ft.	28.4 ft.
Max. # of stories	2.5 stories	2.5 story
Max. building lot coverage	20%	16.4%
FAR	.3	.27
Open Space	65%	79.8%
Build Factor	25	14.41

As illustrated above, the new front lot meets Table 1 requirements except for the existing front setback of 16 ft. As the dwelling was constructed in approximately 1830, which predates zoning, and since there appear to have been no alterations to the front of the building, this has been deemed to be a valid legal non-conforming setback.

Section 30-15(r), Table A, Development Controls for Rear Lot Development in Residential Zoned establishes the controls applicable to the proposed new rear lot (Lot 2) in a Single Residence 2 District.

Single Residence 2 Rear Lot	Required	Proposed Rear Lot 2
Minimum lot size	18,000 sq. ft.	20,446 sq. ft.
Frontage	20 ft./100 ft.*	43 ft./130 ft.
Setbacks		
Front	30 ft.	36.2 ft.
Side	23 ft.	42.3 ft.
Rear	23 ft.	28.1 ft.
Building height	30 ft.	29.45 ft.
Max. # of stories	2.5 stories	2.5 story
Max. building lot coverage	17%	9%
FAR	.2	.18
Open Space	65%	73.3%
Build Factor	25	22.82

* Required for street lot. Also required for rear lot, but may be measured along the rear lot line of the lot in front.

The subject Lot 2 and proposed single-family dwelling meet all of the above requirements.

B. Relevant Site Plan Approval Criteria, Sec.30-23

1. Convenience and safety of vehicular and pedestrian movement within the site

The site appears to be adequate for vehicular and pedestrian movement, however, ***prior to the public hearing the Fire Department is expected to provide further comments on this issue.***

While the Planning Department had suggested a shared driveway for both lots, the grades on the site made this inefficient. The site design indicates private driveways for each lot located off Gray Birch Terrace. The petitioner is proposing to remove the existing bituminous parking area and create a new parking area closer to the existing house on the proposed front lot. The existing parking area is approximately 33 ft. long and 18 ft. deep, and is located right on the street. Although the Planning Department had urged the petitioner to convert the existing structure to a single-family residence to be consistent with the neighborhood, staff suggested that if the petitioner wanted to try to maintain the two-family structure, that they look at options to improve the parking facilities such that they are not substandard spaces on the street. The petitioner is now proposing two tandem stalls (all of which are 9' x 19') for each unit on the front lot. ***Though it appears that both stalls are outside the front setback one stall appears to be located closer than 5 ft to the existing residence. Prior to the public hearing the petitioner should submit revised plans shifting these stalls slightly east in order to meet all setback requirements per Section 30-19, or seek appropriate waivers from this section of the Ordinance.***

As proposed, Lot 2 would be served by a long steeply sloped 14 ft. wide driveway leading to a basement garage with parking for two cars. The driveway is served by a grass paved area, which is critical as a turn around for emergency vehicles. ***Should the Board of Aldermen approve this petition the Planning Department recommends a condition restricting any parking in this area in order to facilitate emergency vehicular turn-around.***

2. Screening of parking areas and structures on the site from adjoining premises or from street by walls, fences, plantings, or other means

The rear portion of the existing lot is heavily wooded and the Planning Department believes maximizing preservation of existing mature trees is critical to preserve the wooded character of these lots and to provide adequate screening from nearby properties. The petitioner has submitted a tree removal plan to the City's Tree Warden. ***The Tree Warden is expected to provide further comments on the plan prior to the public hearing.***

The petitioner submitted a landscape plan indicating the removal of 27 trees totaling 292 DBH, however, the petitioner is also proposing 292 caliper inches of replacement trees including 15 deciduous and 59 evergreen trees. It appears the petitioner has attempted to locate most of the evergreen replacement trees along the lot lines in order to provide screening from abutting residences. The petitioner has also proposed plantings to help screen the proposed retaining wall from abutting residences to the east on Elmwood Park. Though there is some existing fencing on abutting properties it does not appear that the petitioner is proposing new fence around his property.

The Planning Department notes that the petitioner should provide screening around the front end of the parking area on the front lot to screen the new house in back from headlights. Finally the Planning Department notes that the landscape plan must be revised to reflect the most recent set of revisions to the site plan. ***Prior to the Working Session, the petitioner should submit a revised landscape plan that is consistent with the other site plans and includes screening of the parking stalls on the new front lot.***

3. Avoidance of major topographical changes; tree and soils removal shall be minimized

The petitioner is proposing major changes in the topography to accommodate the new residence, driveway and patio and will be adding fill (up to 11 ft.) in some portions of the site. It appears there will be two stone walls terracing up the rear portion of the site. ***The Engineering Division of the Public Works Department is expected to provide review comments under separate cover prior to the public hearing.***

As noted above, the petitioner is proposing to remove trees totaling 292 DBH and will be replacing them with 252 DBH of evergreen trees (59 trees) and 40 DBH of deciduous trees (15 trees). ***Prior to the working session, the petitioner should submit a tree protection plan, for review and approval by the Director of Urban Forestry, in order to ensure that all remaining trees are preserved throughout the construction process.***

4. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

As proposed the new single-family residence will be sited approximately 18 ft. below the existing two-family dwelling on the front lot. Though the new house will be located approximately 20 ft. above the abutting houses on Elmwood Park these houses are more than 120 ft. away from the proposed new residence. The closest house to the new residence would be located approximately 65 ft. south, and is sited 13 ft. above the proposed new residence. The abutter to the north is located approximately 84 ft. away and is sited approximately 3 ft. above the proposed new structure.

The Planning Department notes that the architect has sited the house on an angle in order to reduce the visual impact of any one building elevation from surrounding residences. However, the Planning Department still feels the proposed structure is quite tall particularly when viewed from the east, and has consistently encouraged the petitioner to consider reducing the roof profile in order to reduce the scale of the new residence. Though there are some large houses along Highland Avenue, the average house size in the immediate area (immediate abutters and residences along Gray Birch Terrace) is ~2,700 sq. ft. The petitioner's proposed new residence is ~3,700 sq. ft., which may result in this structure appearing to be out of scale with the immediate neighborhood.

C. Relevant Special Permit Criteria, Sec.30-24

1. The specific site is an appropriate location for such use, structure

This site is located in a single-family residential neighborhood and is one of the largest lots in the immediate area. Therefore, subdividing this lot into two lots to construct a new single-family residence should be generally consistent with the use and size of many surrounding lots in the neighborhood. Given that the new residence will be approximately 30% larger than the average house size in the immediate neighborhood, the mass of the structure may appear to be slightly out of scale.

Although the Planning Department had urged the petitioner to convert the existing structure to a single-family residence to be consistent with the neighborhood, the Board should consider whether or not this site is appropriate for such a (legal) non-conforming two-family use.

2. The use as developed and operated will not adversely affect the neighborhood

The proposed new lot will be accessed from Gray Birch Terrace and the additional traffic generated from the proposed single-family house should not adversely affect the neighborhood. However, as previously noted, the petitioner is proposing to remove a number of trees and to infill a significant portion of the rear lot in order to site the house, driveway, and patio. As long as the house is adequately screened with evergreen landscaping and drainage is contained on site the proposed use as developed should not adversely affect the neighborhood.

The Planning Department has recommended that the petitioner reduce the height and size of the proposed structure in order to minimize visual impacts on abutters and to be more compatible with existing residences in the neighborhood.

VII. SUMMARY

The petitioner is proposing to subdivide an existing 36,474 sq. ft. lot in order to allow for the construction of a single-family residence on the newly created lot. The petitioner is proposing significant re-grading of the site and has requested a special permit for a change in grade of greater than 3 ft (and up to 11 ft.) to accommodate the new dwelling. Both lots will meet all of the dimensional controls except for the existing non-conforming front setback of the existing non-conforming two-family dwelling. The petitioner's request is the first rear lot subdivision petition under the revised rear lot ordinance (30-15(r)) adopted by the Board of Aldermen in 2004.

This site is located in a single-family residential neighborhood and is one of the largest lots in the immediate area. Therefore, subdividing this lot into two lots to construct a new single-family residence should be generally consistent with the use and size of many surrounding lots in the neighborhood. However, the proposed structure is larger than the average sized house in this neighborhood. As such, the Planning Department has recommended that the petitioner reduce the height and size of the proposed residence in order to minimize visual impacts on abutters and to be more compatible with existing residences in the neighborhood.

In addition, the Planning Department had urged the petitioner to convert the existing structure to a single-family residence to be consistent with the underlying zoning and the immediate neighborhood. The Board should consider whether or not this site is appropriate for such a (legal) non-conforming two-family use, once the lot is subdivided to create a new single-family residence. As previously noted, as there is no evidence that the existing accessory apartment is

legal, the petitioner should be expected to eliminate that apartment, regardless of whether this special permit is granted.

The rear portion of the existing lot is heavily wooded and the Planning Department believes maximizing preservation of existing mature trees is critical to preserve the wooded character of these lots and to provide adequate screening from nearby properties. ***It is expected that the Director of Urban Forestry will provide comments on the submitted plan prior to the public hearing.***

The Planning Department notes that the petitioner should provide screening around the front end of the parking area on the front lot to screen the new house in back from headlights. Finally the Planning Department notes that the landscape plan must be revised to reflect the most recent set of revisions to the site plan. The petitioner should submit a tree protection plan in order to ensure all remaining trees on-site are preserved throughout the construction process. ***The petitioner should submit the revised landscape plan and tree protection plan to the Planning and Parks and Recreation Departments, for review, prior to the working session.***

Although the Fire Department has not completed a written review, based on previous meetings with the petitioner, the Planning Department understands that the Fire Department needs to have the grass-paved area, adjacent to the house, clear of vehicles to allow for sufficient room to turn the Fire truck around and exit the site, in the event of an emergency. Should the Board of Aldermen approve this petition the Planning Department recommends a condition restricting any parking in the grass-paved area on the new rear lot in order to facilitate emergency vehicular turn-around.

Finally, although the petitioner is proposing to reconfigure the parking area for the existing structure, by pulling that parking away from the street and creating legal sized spaces, at least one spaces is located too close to the structure. ***Prior to the public hearing the petitioner should submit revised plans shifting the parking area on the front lot east in order to meet all setback requirements established in Section 30-19, or seek the appropriate relief necessary.***

ATTACHMENTS

ATTACHMENT A: Zoning Review Memorandum, dated October 5, 2006

ATTACHMENT B: Letter from Paul E. Foley, Sr. Building Inspector, dated October 10, 1986